IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Bail Appl..No. 7391 of 2007()

CRIME NO. 572/07 OF HARBOUR POLICE STATION

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PETITIONERS/ACCUSED NO.S 4 & 9

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1. SHIJU,AGED 29 YEARS,S/O.SUBRAMANIAM,
   ITHITHARA HOUSE, EDAKOCHI, COCHIN-6.

2. SUBAIR, AGED 28 YEARS,S/O.MOHAMED,
   RESIDING AT JOSEY'S HOUSE,
   PULLARDESOM ROAD, PALLURUTHY.

BY ADV. SRI.ASHIK K.MOHAMMED ALI

RESPONDENTS:

STATE OF KERALA,REPRESENTED BY THE
SUB INSPECTOR OF POLICE,
ALAPPUZHA SOUTH POLICE STATION,THROUGH THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7391 of 2007

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Dated this the 30th day of November, 2007

O R D E R

Application for regular bail. The petitioners are accused 4 and 9 in a crime registered for offences punishable under Sections 457, 380 and 461 I.P.C. The alleged incident took place on 28.9.2007. The articles kept in a container left at the Cochin Port were allegedly taken away by the miscreants after breaking open the seal of the container. The container itself was removed, its seal was broken open, the articles were removed and the container was left at the original place. According to the prosecution this is part of a series of offences that have been taken place in the Cochin Port. The petitioners were arrested on 22.10.2007. They continue in custody from that date.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. They have been remaining in custody from 22.10.2007. They may now be enlarged on bail, it

is prayed. It is first of all submitted that the 9th accused has no criminal antecedents whatsoever.

3. The learned counsel for the petitioners prays, the learned Prosecutor does not oppose the said prayer on condition that appropriate safeguards are insisted and I am satisfied that the second petitioner/A9 can now be directed to be released on bail. In coming to this conclusion I take note of the submission of the learned counsel and the learned Prosecutor that the second petitioner has no criminal antecedents.

4. So far as the first petitioner/A4 is concerned, the learned Prosecutor vehemently opposes the application. He submits that the petitioner is involved in many other crimes and he may not be enlarged on bail. Some of the co-accused have to be apprehended. Investigation is not complete. It is too early to release the first petitioner/A4 on bail now.

5. The learned counsel for the petitioners submits that as early as on 3.10.2007 the alleged involvement of the first petitioner(A4) was known to the Investigating Officer. Though the first petitioner was in

custody for a long period of time thereafter in other crimes, no steps were taken to effect arrest of the first petitioner in this crime and only after the petitioner was released on bail in the other crime was he arrested. That circumstance notwithstanding I am satisfied that there is merit in the opposition. I am satisfied that at this early stage of investigation, the petitioner/A4 is not entitled to be released on bail. The Investigators, in a serious crime like this, must be given sufficient time to complete the investigation, I am satisfied.

6. In the result:

(1) this application is allowed in part.

2) The 2nd petitioner/A9 shall be released on bail on the following terms and conditions.

(a) The petitioner/A9 shall execute a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) He shall make himself available for interrogation before the Investigating Officer on all Mondays, Wednesdays and Fridays between 10 a.m. and 12 noon for a period of two months and

thereafter as and when directed by the Investigating Officer in writing to do so.

© The petitioner/A9 shall not enter the jurisdiction of Harbour police station until further orders, without the prior permission of the learned Magistrate, except for the purpose of complying with condition (b) above.

(3) The application in so far as it relates to the first petitioner/A4 is dismissed. But I may hasten to observe that the petitioner/A4 shall be at liberty to move this court or the courts below for bail again at a later stage of the investigation, not at any rate, prior to 14.12.2007. The Investigators shall, in the meantime, make every endeavour to arrest the co-accused and complete the investigation.

(R. BASANT)
Judge

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